

Claimant began working as a driver for the respondent in December 2003. He drove a 15 passenger van to shuttle military recruits from Hays, Salina, Manhattan, and Topeka to the military personnel processing center in Kansas City, Missouri. On June 23, 2004, the claimant was driving eastbound on Interstate 70 from Salina to Manhattan when he noticed traffic in the westbound lanes slowing and vehicles driving into the ditch. Claimant then observed a man laying in the middle of the westbound lanes removing his clothing.

Claimant pulled over onto the shoulder of the road and parked his van. A truck driver headed east had also pulled over and claimant noticed the driver was talking on his cell phone. Likewise a truck driver headed west had pulled over, stopped and was standing beside his truck using his cell phone. Claimant called 911 to report what he saw occurring.

The claimant then walked across the center median and went to where the man was laying in the center of the roadway. The man was laying in the middle of the road without a shirt, had his pants pulled down to his shoes and his underwear half off. The man was slapping the pavement with his hands and screaming "get them off of me."¹ Claimant was concerned the man was going to get struck by a vehicle or cause somebody to swerve to miss him and wreck. So while one of the truck drivers diverted traffic the claimant attempted to remove the man from the roadway. The man resisted and during the altercation the man pulled on claimant's arm. The claimant heard a pop in his neck and shoulder and felt an immediate onset of pain. Claimant finally succeeded in getting the man over to the side of the road where they stayed until emergency personnel arrived at the scene.

Claimant contacted his district supervisor, Norm Orr, and told him about the incident and that he needed medical treatment. Claimant was told to go to the hospital and he sought medical treatment at Russell Regional Hospital's emergency room. He was prescribed some medication and told to follow-up if need be. The claimant continued to work his regular duties through January 14, 2005. Claimant testified the driving aggravated his shoulder and he had asked for additional treatment but it was not authorized.

Claimant left the state to visit family in California and Washington and was advised by the respondent that his position had been replaced by someone else. On March 30, 2005, the claimant sought treatment for his left shoulder problems in Washington. He saw Dr. Richard Starrett who referred the claimant to an orthopedist. Surgery was performed on June 16, 2005, by Dr. John C. Schwartz and claimant was taken off work for approximately six weeks.

¹ P.H. Trans. at 28.

Respondent argues that claimant was not acting in the performance of his job when he decided to provide assistance to the man in the roadway. Rather, claimant, while acting as a good Samaritan, had deviated from his job for personal reasons and his injury would not be compensable.

Kansas has long recognized the principle that where the business errand is finished or abandoned and the worker sets about the pursuit of his own pleasure or indulgence, the employer is not liable for compensation.²

The claimant noted that when he was hired he had to go through orientation and training which included DOT certificates which required that he be checked out according to Department of Transportation standards.

The claimant testified that the reason he went to assist the man was because he felt that DOT regulations required that he stop and render assistance. He also was afraid that if he did not provide assistance either the man or someone else would end up dead. The claimant testified:

Q. Okay. Was there anything in your employment duties that required you to make this stop?

A. The only thing that I know, sir, is that if -- when we drove under DOT standards, we were regulated by DOT. DOT had say over everything and I do know from my experience before that any time you drive under DOT, you must render assistance if you are able, to anyone that is having an emergency situation on, on the road.

Q. Is that some training that you learned with your, your employer that you were working for?

A. Through DOT, yes. Through -- well, I won't say so much as through Highland Express [Respondent]. But through driving under DOT standards for driving semi trucks or anything else, that that's just -- I mean that's, that's practice. You have to. It's mandatory, you stop and render assistance.³

But the claimant further agreed that had he been driving his personal vehicle he still probably would have stopped to render assistance.

Claimant noted that the only reason he was at that location was because it was the route he had to travel to perform his job and the reason he stopped, got out and rendered

² *Woodring v. United Sash & Door Co.*, 152 Kan. 413, 103 P.2d 837, (1940).

³ P.H. Trans. at 31-32.

assistance was because he felt DOT regulations required him to render assistance. He testified:

Q. The only reason you were at that particular point of the roadway on I-70 that day was because of the route of travel you had to take for work?

A. Yes, sir.

Q. There wouldn't have been any other reason you would have been there that day?

A. No, sir.

Q. And the reason you got out and went over and tried to get this gentleman off the road was because you felt obligated at that point because of your work status and your understanding of the DOT regulations that you believed required you to render assistance?

A. Yes, sir.⁴

As part of his licensing as an over-the-road truck driver for a different employer, the claimant was trained and believed it was his duty to stop and provide assistance in roadway emergency situations. Claimant believed that duty was applicable to his job driving the passenger van for respondent. An employer's order to perform a task does not necessarily need to take the form of a command if under all the circumstances the employee's impression of what is expected of him is sufficient to motivate the employee to undertake the activity. It does not appear from the record that respondent disabused claimant of his previous training that he was subject to DOT regulations and had a duty to provide assistance in emergency roadway situations.

It is generally held that an activity undertaken in good faith to advance the employer's interests, whether or not the employee's own assigned work is thereby furthered, is within the course of employment.⁵ Because claimant's actions were intended to help prevent further injury and accidents, his actions supported the duty to provide assistance in emergency situations which provides safer roadways and an environment where assistance is provided in emergency situations. That benefits an employer such as respondent who has employees routinely using the roadways.

Moreover, in Larson's *Workers' Compensation Law*, it is noted that injury incurred in the rescue of a stranger is compensable if the conditions of employment place the claimant in a position which requires the employee by ordinary standards of humanity to

⁴ *Id.* at 40-41.

⁵ 2 *Larson's Workers' Compensation Law*, Ch. 27, at 27-1.

undertake the rescue.⁶ In this instance, claimant's job placed him on the roadway where he witnessed the emergency situation. Claimant correctly perceived the man in the roadway to be in imminent danger and proceeded to rescue him from the roadway. It was claimant's employment that placed him in the position where he encountered the emergency roadway situation and his humanitarian efforts to alleviate the danger is accordingly considered incidental to his employment.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.⁷

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated September 22, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of December 2005.

BOARD MEMBER

c: Brian D. Pistotnik, Attorney for Claimant
John B. Rathmel, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁶ *Id.*, Ch. 28, at 28-1.

⁷ K.S.A. 44-534a(a)(2).